

1982 S.C. Op. Atty. Gen. 12 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-10, 1982 WL 154980

Office of the Attorney General

State of South Carolina

Opinion No. 82-10

March 2, 1982

**\*1 SUBJECT: Health, Food, Education**

The Department of Health and Environmental Control may inspect school lunchrooms and sanitary facilities in private schools.

TO: Jacquelyn S. Dickman

Assistant

General Counsel

S.C. Department of Health and Environmental Control

QUESTIONS:

May the Department of Health and Environmental Control inspect private school lunchrooms and sanitary facilities?

Does the Department of Health and Environmental Control's authority to inspect school lunchrooms conflict with the Department of Education's authority to regulate schools?

STATUTES:

[Sections 44-1-110, 44-1-140, 59-23-170 of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#), as amended; [Regulations 61-25 and 61-42 of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#), as amended.

DISCUSSION:

You have inquired as to whether the Department of Health and Environmental Control (DHEC) may inspect lunchrooms and sanitary facilities in private schools. Additionally, you ask whether the authority of DHEC to regulate sanitation of schools conflicts with the authority of the Department of Education.

In answer to your first question, please be advised that [Section 44-1-140 of the 1976 CODE OF LAWS OF SOUTH CAROLINA](#), as amended, in pertinent part, authorizes the Department of Health and Environmental Control to 'make, adopt, promulgate, and enforce reasonable rules and regulations' requiring and providing for, among other things, the sanitation and disinfection of all schools and food-service establishments in this State. Pursuant to that authority, the Department has promulgated regulations in furtherance of its enforcement responsibilities which in part provide for the inspection of food-service establishments, expressly including school lunchrooms, and which set standards for the construction of school sanitary facilities. (R. 61-25 and R. 61-42 of the 1976 CODE, as amended.)

It is manifestly certain from a review of the aforementioned provisions of law that the Department's regulatory scheme was intended and in fact does cover all schools in this State, whether public or private. Such a view is consistent with the language of the aforementioned provisions of law and the Department's function as the sole advisor of the State in all questions involving the protection of the public health within its limits. [Section 44-1-110, 1976 CODE](#). Therefore, it is our opinion that DHEC has authority to inspect school lunchrooms and sanitary facilities in private as well as public schools.

Regarding your second question, as previously noted, DHEC [Regulation 61–42](#) governs the sanitation of all schools in this State. The Department of Education, while generally responsible for adopting minimum standards for educational facilities, has no responsibility which duplicates or displaces DHEC's responsibility for protecting the public health. Accordingly, there appears to be no conflict between their respective areas of delegated authority since each regulates a separate and distinct area. To the extent that any apparent conflict may arise under their respective responsibilities, in matters affecting public health, the Department of Health and Environmental Control should prevail. See [Section 59–23–170 of the 1976 CODE](#).

CONCLUSION:

\*2 Therefore, it is the opinion of this Office that the Department of Health and Environmental Control may inspect private school lunchrooms and sanitary facilities as provided by law. It is also the opinion of this Office that no apparent conflict exists between the respective authority granted to DHEC and the Department of Education.

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